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**BRIEFING PAPER**

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# Social care: Announcement delaying introduction of funding reform (including the cap) and other changes until April 2020 (England)

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# Summary


On 17 July 2015, the Government announced that it would delay reform of social care funding from April 2016 to April 2020.

This delay included the introduction of the cap that was intended to limit the liability of those self-funding their social care, and also the more generous means-test that would have allowed more people to qualify for local authority financial support towards the cost of their care.

The Government has not stated what the level of the cap will be, or the means-test, when they are introduced in April 2020, but rather that "a decision on these will be taken nearer the time" of their introduction.

The Parliamentary Under Secretary of State, Department of Health, Lord Prior of Brampton, cited the expected £6 billion cost of the policy (over five years) at "a time of consolidation" as the reason for the delay, and noted the "genuine concerns raised by stakeholders".

Although the policies of a cap and a more generous means-test were originally those of the Coalition Government, in its manifesto for the 2015 General Election the Conservative Party committed to introduce the policies and according to the timetable of April 2016 set by the Coalition.

In addition to postponing the funding reforms, the Government has also postponed the introduction of local authority "brokering" on behalf of self-funders (until April 2020) and the new appeals system, both of which were also due to come into effect in April 2016.

Further information on the background to the funding reforms, and what the reforms were intended to look like in practice can be found in the Library Briefing Papers:

- *Social care: background to planned funding reforms (including the "Dilnot Commission")* (SN06391); and
- *Social care: how the postponed changes to paying for care, including the cap, would have worked (England)* (SN07106).

Information on the current social care funding system can be found in:

- *Social care: paying for care homes places and domiciliary care (England)* (SN01911)
- *Social Care: Direct Payments from a local authority (England)* (SN03735)
- *NHS Continuing Healthcare in England* (SN06128).

# 1. Social care funding reform

## 1.1 Background

### Summary

In summary, the Coalition Government announced reforms to social care funding that included (from April 2016):

- the introduction of a cap on the amount a person had to pay for their social care during their lifetime; the cap was to be set at £72,000;
- a significantly more generous means-test – for homeowners, the upper capital limit would increase from £23,250 to £118,000; for others, it would rise from £27,000.

### The "Dilnot Commission's" recommendations and the Government's response

The Care and Support Commission, led by Andrew Dilnot, published its report in July 2011 (the "Dilnot report"). Its recommendations included the introduction of a cap on social care costs "to protect people from extreme care costs" in a range of £25,000 to £50,000, with a suggested rate of £35,000.

It also proposed an increase in the upper capital limit for the means-test – below which people are eligible for local authority financial support towards their care costs[1] – from £23,250 to £100,000.[2]

Further information can be found in the Library briefing paper *Social care: background to planned reforms (including the "Dilnot Commission")* (SN06391).

Following the Commission's report, the Coalition Government published a White Paper and the draft *Care and Support Bill*, before introducing the *Care Bill* to Parliament – which was placed on the statute book to become the *Care Act 2014*.

In February 2013, the Health Secretary, Jeremy Hunt, announced that the Government would follow the Commission's recommendation and introduce a cap on social care charges in April 2017:

> The Dilnot commission's original suggestion was for a cap of £25,000 to £50,000 in 2010-11 prices—the equivalent of £30,000 to £61,000 in April 2017 prices. Despite the extremely challenging economic situation in which we find ourselves, we have come as close to that range as possible. The cap will be set at £61,000 in 2010-11 prices or £75,000 once it is introduced in April 2017.[3]

Mr Hunt also accepted the recommendation that the upper capital limit be "raised dramatically to £100,000 in 2010-11 prices" meaning that

1 Subject to the recipient contributing their relevant income, plus any "tariff income" in respect of their capital in excess of the lower capital limit, minus either the Personal Expenses Allowance (for care home residents) or the Minimum Income Guarantee (for people in other settings).
2 Care and Support Commission, *Fairer Care Funding*, July 2011, p5
3 HC Deb 11 February 2013 cc592–593

"from April 2017, the threshold will be increased so that those with assets worth £123,000 or less, equivalent to Dilnot's recommended level, will all receive some degree of financial support for their care costs".[4]

A month later, in the 2013 Budget Red Book, the Treasury announced both a lower level of the cap and an earlier introduction of the reforms, but also a lower level of the upper capital limit: "the Government will introduce a £72,000 cap on reasonable care costs and extend the means test from April 2016".[5] In his Budget Statement, the Chancellor of the Exchequer, George Osborne, added that the upper capital limit would be set at a lower rate of £118,000, adding: "for decades, politicians have talked of doing something for savers and those who have to sell their homes to pay for care, and yet nothing has been done—until this week".[6]

Section 15 of the *Care Act 2014* placed the cap on social care costs onto the statute book, although the detail, including the level of the cap, was to set out in regulations.

In January 2015, the Coalition Government published draft regulations confirming the details of the cap and the more generous means-test that had been set out in the 2013 Budget. This was published alongside a consultation on the proposed funding reform.

## 1.2 The Conservative Party's manifesto pledge

While the reforms to social care financing outlined in section 1.1 above were a policy of the Coalition Government,[7] the Conservative Party's manifesto for the 2015 General Election stated that a Conservative Government, if elected, would implement them and on the timescale already set.

On the first page of text in the Manifesto, under the heading "we have a plan for every stage of your life", the document stated: "we will cap the amount you can be charged for your residential care".[8] Further detail was provided later in the document:

> We will cap charges for residential social care from April 2016 and also allow deferred payment agreements, so no one has to sell their home. For the first time, individual liabilities will be limited, giving everyone the peace of mind that they will receive the care they need, and that they will be protected from unlimited costs if they develop very serious care needs – such as dementia.[9]

4 HC Deb 11 February 2013 c593
5 HM Treasury, *Budget 2013*, 2012–13 HC 1033, p57, para 1.195
6 HC Deb 20 March 2013 c941
7 Further information can be found in the Library briefing paper *Social care: background to planned reforms (including the "Dilnot Commission")* (SN06391).
8 Conservative Party, *The Conservative Party Manifesto 2015*, April 2015, p3
9 As above, pp65 and 67

## 1.3 Announcement of delay until April 2020

On 17 July 2015, some two and a half months after the General Election, the Government announced a four-year delay in the introduction of the cap on social care costs.

In a Written Statement, the Parliamentary Under Secretary of State, Department of Health, Lord Prior of Brampton, announced that "we have taken the difficult decision to delay the introduction of the cap on care costs system until April 2020", adding that it was "not a decision that has been taken lightly".[10]

The estimated £6 billion cost of the new policy over five years and the "genuine concerns raised by stakeholders" was cited as reasons.

Noting that the cap was proposed by the Dilnot Commission, the Minister stated that the Government "still accepts that recommendation and remains firmly committed to delivering this historic change", but added that:

> the proposals to cap care costs and create a supporting private insurance market were expected to add £6 billion to public sector spending over the next 5 years. A time of consolidation is not the right moment to be implementing expensive new commitments such as this, especially when there are no indications the private insurance market will develop as expected.

He added that "local authorities and partners have consistently warned us of the risks of implementing this too quickly. We will therefore not be complacent, but work hard to use this additional time to ensure that everyone is ready to introduce the new system and that people can understand what it will mean for them".

The Department of Health (DH) has confirmed that the more generous means-test – also due to be introduced in April 2016 – has been deferred until April 2020.[11]

In the Written Statement, the Minister explained that the delay would also allow the Government to "time to take stock" on "some of the other elements of the care and support reforms that are intended to support the cap system", which included the new means-test levels.

### Correspondence between the Minister and Local Government Association

In the Written Statement, the Minister noted that "a letter from the Local Government Association [LGA], dated 1 July, was clear that we need to think carefully about all the options, including postponing new initiatives".[12]

The LGA's letter, from the Chair of the LGA Community Wellbeing Board, Izzi Seccombe and dated 1 July 2015, noted that the LGA had "consistently supported the principle of the cap on care costs (and the concomitant extension to the financial means test thresholds)".

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10 HLWS135, 17 July 2015
11 Email to the House of Commons Library from Department of Health officials, 21 July 2015
12 HLWS135, 17 July 2015

Ms Seccombe stated that "one of the very top priorities for the coming years must be adult social care … But this has very real limits. We estimate that the funding gap in adult social care is growing by a minimum of £700 million a year" at a time when "local government funding will again be under enormous pressure in the coming years".

She therefore advocated the need to "think very carefully about all the options to protect social care" and "reluctantly" suggested that "the Phase 2 Care Act [funding] reforms should be delayed, with the money earmarked for the capped cost system instead put into the social care system itself".

The LGA also argued that this would have "wider benefits beyond the crucial mitigation of the impact of further budget pressures on the system", by providing "additional time to model the cost of the Phase 2 reforms [and] for the production of the final regulations and guidance [which] in turn will give councils a longer lead-in time as they prepare for Phase 2".[13]

In his reply of 17 July 2015, the Community and Social Care Minister, Alistair Burt, stated that the "Government continues to be firmly committed to implementing the cap on care costs system", but added that "Government is about taking the hard choices and not proceeding to simply meet a deadline, but listening to the experts in the system and responding to the challenges they set out whilst also tackling the hard task of balancing the books".

Using similar wording to the Ministerial Statement, Mr Burt said that the expected cost of the introduction of the cap was not appropriate at a "time of consolidation … especially when there are no indications the private insurance market will develop as expected", and stated that the introduction of the cap would be delayed until April 2020. The Government would, he said, "work hard to use this additional time to ensure that everyone is ready to introduce the new system".[14]

## 1.4 Savings and reallocation

In her letter to the Minister, Izzi Seccombe had argued that "the money earmarked for the capped cost system instead put into the social care system itself".[15]

The Minister's reply did not comment on the LGA's proposal (and neither did the Written Statement).[16] The *Financial Times* reported that "health department officials said no decisions on additional funding for social care would be made ahead of the spending review later this year".[17]

[13] Local Government Association, Letter from Izzi Seccombe to Jeremy Hunt, 1 July 2015, pp1–2

[14] Department of Health, Letter from Alistair Burt to Izzi Seccombe, 17 July 2015, pp1–2

[15] Local Government Association, Letter from Izzi Seccombe to Jeremy Hunt, 1 July 2015, p2

[16] "Government shelves Care Act funding reforms until 2020", *Community Care*, 17 July 2015

[17] "Delay to cap on care home costs sparks furore", *Financial Times*, 17 July 2015

The outcome of the Spending Review is expected to be announced on 25 November 2015.

## 1.5 Reaction

The Government's announcement of the delay was met with a mixed reaction; an article in *The Guardian* included quotes from some of the interest parties.

A number of organisations welcomed the Government's announcement:

- "The announcement to delay the second phase of the Care Act is a positive recognition from government of what the LGA has been warning – that we cannot try and reform the way people pay for adult social care when the system itself is on such an unstable foundation … If both the reforms and the care system were fully funded, we would not need to suggest a delay. Any money from delaying the reforms must be put back into adult social care services and support putting it on a sustainable footing" – Izzi Seccombe, chairman of the LGA's Community Wellbeing Board;[18]
- "The pressures of rising demand, punitively reduced budgets and the impending obligation to pay an enhanced national living wage have all put an intolerable strain on social care finance … Frankly, if directors were asked to choose between implementing the funding reforms right now or having the money directly to fund these growing demands they would almost without exception prioritise a fair and sustainable funding settlement to meet the true cost of providing safe, good quality care. The important issue now must be to ensure that current services can benefit from the extra funding this decision makes available" – Harold Bodmer, vice president of the Association of Directors of Adult Social Services;[19]
- "The government has made the right decision to delay the introduction of the care cap. The care system is in crisis. Extra funding is urgently needed … To introduce a cap without doing anything to address the underfunding of social care would be a recipe for disaster" – Vicky McDermott, chair of the Care & Support Alliance;[20] [21]
- "Sense welcomes the fact that the government has recognised that this is not the right time to introduce the cap. Addressing the underfunding of social care is a more urgent priority than a

[18] Local Government Association, *LGA responds to Care Act delay*, media release, 17 July 2015

[19] Association of Directors of Adult Social Services, *Care Act delay 'understandable and inevitable' – ADASS*, press release, 17 July 2015

[20] Care and Support Alliance, *CSA welcomes care cap deferral*, news story, 17 July 2015

[21] The Care and Support Alliance represents "80 of Britain's leading charities campaigning for a properly funded care system" including AgeUK, Disability Rights UK and Mencap [see Care and Support Alliance, *About us*, website [taken on 21 July 2015]

cap … Only once we have a stable care system can we consider introducing a cap" – Sue Brown, head of public policy at Sense;[22]

- "The cap on care costs was a bad idea, very poorly implemented. It is a con that would have benefited few older people and their families. It should be scrapped not postponed. The real issue is the substantial underfunding of care for our ageing population" – Stephen Burke, director of the Good Care Guide website.[23]

Some were dismayed that the introduction of the cap would be deferred:

- "We're very disappointed by today's announcement from the Department for Health revealing a delay of the cap on individuals' care costs. A delay of four years, until 2020, is outrageous and brings into question the future of care funding … This further delay suggests that social care reform is simply not a priority for government" – Jane Ashcroft CBE, chief executive of Anchor Care Homes;[24]
- "We're disappointed at today's announcement delaying the care cap for another four years. This will cause unacceptable costs to continue to be borne by people with dementia and their families into the next decade … The care cap is only part of the solution – the significant underfunding of social care must also be addressed" – Jeremy Hughes, chief executive of Alzheimer's Society.[25]

## 1.6 Next steps

In the Written Statement, the Government stated that:

> Further announcements will follow in due course.
>
> We will also look at what more we can do to support people with the costs of care. The new pension flexibilities introduced in April create a real opportunity for us to continue to work with the financial sector to look at what other products may be created to help people meet the costs of care, creating even more choice and enabling people to better plan and prepare for later life. To this end I will be holding an urgent meeting with representatives from the insurance industry along with HM Treasury and other Government Ministers to work through what this announcement means for them and how Government can help them to bring forward new products. These discussions will continue over the summer.[26]

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[22] Sense, *Sense responds to the Department of Health's decision to delay the introduction of a cap on social care*, 17 July 2015

[23] "Care costs cap delay: government urged to resolve funding crisis", *The Guardian*, 17 July 2015

[24] As above

[25] Alzheimer's Society, *Alzheimer's Society response to the delay in the implementation of the cap on care costs*, news release, 17 July 2015

[26] HLWS135, 17 July 2015

A further announcement from the Government is awaited which will state whether the existing capital limits in the means-test will be revised – these were last changed in March 2010;[27] the Coalition Government explained in January 2011 that in the "context" of the 2010 Spending Review, Ministers had decided not to make the capital limits more generous.[28]

27 Department of Health, *Charges For Residential Accommodation – CRAG Amendment No 29*, 19 March 2010, Local Authority Circular LAC(DH)(2010)2, Annex, p3, para 5

28 Department of Health, *Charges For Residential Accommodation*, 28 January 2011, Local Authority Circular LAC(DH)(2011)1, Annex, para 5

# 2. Local authority brokering

## 2.1 Background

Section 18(3) of the *Care Act 2014*, once brought into force, will allow those people who did not qualify for local authority funding (because of the means-test) to nevertheless request that the local authority should meet their needs. In practice, this would mean that they ask the local authority to act as "broker" to arrange their care on their behalf, although they would still have to pay for it if they had sufficient means (as determined by the means-test).

In the October 2014 *Care and Support Statutory Guidance*, the DH stated that it was "likely that 'brokering' would only be an effective way of meeting a person's needs in exceptional circumstances".[29]

The DH explained that such brokerage arrangements might be used "where a person has capacity, but lacks the skills or confidence to arrange their own care, and would benefit from the local authority's support in managing a contract with a provider". Alternatively, it might be "because they do not have the mental capacity to do so and have no attorney or deputy to act on their behalf, or it may be that, even though they have the capacity to decide where to live, they are not able to manage the making of the arrangements and have no friends or relatives to assist them".

In such circumstances, the DH explained:

> The local authority should treat the person in the same manner as it would anyone else whose needs it is meeting – including the agreement of a care and support plan, and the right to a choice of accommodation … The local authority is responsible for making arrangements for the provision of their accommodation, with reimbursement from the person as necessary. The person would remain ordinarily resident in their placing local authority, even where they enter the accommodation in another local authority area.[30]

The Guidance added that "if there is a risk that a person's needs would not be met effectively by means of 'brokering', the local authority should discount it as an option and proceed with other ways of meeting that person's needs, such as direct commissioning of services from a provider".[31]

## 2.2 Announcement of delay until April 2020

In his Written Statement of 17 July 2015, the Parliamentary Under Secretary of State at the Department of Health also announced he was:

> able to confirm that we will delay the full introduction of the duty under Section 18(3) of the Care Act on local authorities to meet the eligible needs of self-funders in care homes to April 2020 to allow more time to be taken to consider the potential impact on

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29 Department of Health, *Care and Support Statutory Guidance*, October 2014, p170, para 10.16
30 As above, p473, Annex H4, paras 22–23
31 As above, p170, para 10.16

the market and the interaction with the cap on care costs system.[32]

[32] HLWS135, 17 July 2015

# 3. Care and support appeals system

## 3.1 Background

Section 72 of the *Care Act 2014*, once brought into force, will allow regulations to be made to "make provision for appeals against decisions taken by a local authority in the exercise of functions under this Part in respect of an individual". Section 72 also set out what the regulations may in particular make provision about and how an appeal is to be dealt with, among other things.

The provision was introduced to the *Care Bill* during Committee Stage by the Coalition Government. The then Health Minister, Norman Lamb, told the Committee:

> I know that many hon. Members will join me in welcoming the fact that the Bill establishes a new legal framework that puts the well-being of individuals at the heart of care and support and puts them in control of their own care. The Bill will also put in place a new statutory framework for assessment and care planning, extending the duty to assess carers' needs and allowing people who pay for their own care to count the reasonable cost of meeting their eligible needs towards the cap.
>
> Given those changes, it is important that individuals have confidence in the system, and that they are able to challenge decisions without having to resort to judicial review. Accordingly, we held a wide-ranging consultation during the second half of last year to seek opinions on how best we could ensure that. Following that consultation, we have recognised the need for change in this area, and I have accordingly tabled a new clause that will give us the scope to develop detailed proposals for an appeals system, along with stakeholders, keeping to the spirit of co-production that has characterised our work on other areas of the Bill.
>
> The issue is important and complicated. We need to make sure that we take time to get the detail right, drawing on experience from other sectors where possible, and ensuring that the changes are aligned with the broader changes to NHS and social care complaints, following the Francis report and the Clwyd review. It is possible that we will want to involve an existing statutory body in the appeals arrangements, to bring particular expertise to the process, and so the power is wide enough to enable us to confer functions on such bodies if necessary. Of course, if that involves repealing or amending any element of the primary legislation that relates to such a body, we intend that such regulations would be made using the affirmative procedure. We are not yet in a position to share detailed proposals with hon. Members, but in introducing the new clause I should like to set out the principles that will guide us in developing the new appeals system, and I hope that the Committee will agree that those are right.[33]

[33] PBC 4 February 2014 cc584–585

After the *Care Bill* had received Royal Assent (to become the *Care Act 2014*), the Coalition held a consultation on the proposed regulations that would specify the appeals system; the consultation ran from 4 February 2015 to 30 March 2015.

Unlike the proposed funding reforms, no draft regulations were published by the Coalition Government; the consultation document explained that "the appeals policy is at an earlier stage of development than the rest of this consultation and we are therefore seeking your views on the need for a new system and on policy proposals".[34]

## 3.2 Announcement of delay

In his Written Statement of 17 July 2015, the Parliamentary Under Secretary of State at the Department of Health announced that the Government could also "confirm that the proposed appeals system for care and support will now be considered as part of the wider Spending Review".[35] The outcome of the Spending Review is expected to be announced on 25 November 2015.

[34] Department of Health, *The Care Act 2014 – Consultation on draft regulations and guidance to implement the cap on care costs and policy proposals for a new appeals system for care and support*, February 2015, p89, para 15.1

[35] HLWS135, 17 July 2015

# 4. Health Select Committee investigation

On 23 July, the Chair of the Health Select Committee, Dr Sarah Wollaston, wrote to the Health Secretary, Jeremy Hunt, in regard to the announcement made on 17 July, noting that "the delay of the implementation of the cap until 2020 represents a significant change in Government policy".[36]

Dr Wollaston also asked a number of questions in her letter, to which Mr Hunt responded in his reply of 29 July. Mr Hunt stated that:

- the proposals to make the capital limits more generous would also be postponed until 2020 (as noted above);
- the upper and lower limits would remain at the levels set in January 2010, but that the Government "will continue to keep this under review";
- in response to Dr Wollaston's question asking if the level of the cap and the more generous means-test (or the "parameters" as Mr Hunt referred to them) would be unchanged in cash terms or adjusted for inflation when introduced in April 2020, Mr Hunt only said that they would be "[kept] under review", and "a decision on these will be taken nearer the time" of their introduction, planned for April 2020.[37] Notably, no assurance was given that the cap and means-test would not be lower than originally proposed.

Dr Wollaston had also stated: "you will be aware that the current arrangements result in self-funders effectively subsidising those whose care is paid for by local authorities. Do you have any proposals to address that situation before the introduction of new arrangements in April 2020?". In reply, the Secretary of State said:

> As we made clear in announcing the delay, we intend to use the additional time afforded by the delay wisely to ensure that everyone is ready to introduce the new system in 2020 and to work with the financial sector to explore what more can be done to support people with their care costs. This includes supporting local authority to fully embed the changes introduced as part of the first phase of care and support reform under the Care Act 2014, which came into force in April this year. This includes duties to promote their overall local market of providers to ensure it remains sustainable and able to deliver high-quality services for all local people.
>
> Prices and fee rates paid by commissioners to provider organisations must reflect these new duties. However, that does not mean that there are not good reasons why councils can often pay less than self-funders for care: they often buy in bulk and

36 Health Committee, *Letter to the Secretary of State for Health: Delay in the implementation of the cap on care costs*, 23 July 2015, p1

37 Department of Health, *Letter to the Chair of the Health Committee*, 29 July 2015, pp1–2

> have responsibilities to drive the best deal possible to ensure value for tax payers' money.
>
> We recently published statutory guidance setting out how local authorities should meet their new duties when commissioning, including the consideration of the actual costs of care and support when negotiating fee levels. We will be taking action in partnership with local authorities and providers to ensure this guidance is put into practice, including working to improve local commissioning and to build skills in market shaping, to support delivery of the cap in due course.[38]

On the impact on local authority finances of the National Living Wage, announced in the 2015 Summer Budget, Mr Hunt stated that this would be considered as part of the forthcoming Spending Review.[39]

The Chair of the Committee stated that these topics will be explored further when the Secretary of State gives evidence before the Committee in September.

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38 As above, p2
39 As above, p2

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